

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

ETAS ID: TM328996

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Desert Fasteners and Supply LLC		05/02/2014	LIMITED LIABILITY COMPANY: NEVADA
RECEIVING PARTY DATA			
Name:	Desert Lumber - US LBM, LLC		
Street Address:	6905 Telegraph Road, Suite 205		
City:	Bloomfield Hills		
State/Country:	MICHIGAN		
Postal Code:	48301		
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Serial Number:	86178024	FASTENER PROS	
CORRESPONDENCE DATA			
Fax Number:	2485668531		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	248-566-8530		
Email:	tmdocketing@honigman.com		
Correspondent Name:	Honigman Miller Schwartz and Cohn, LLP		
Address Line 1:	39400 Woodward Avenue, Suite 101		
Address Line 4:	Bloomfield Hills, MICHIGAN 48304		
ATTORNEY DOCKET NUMBER:	DESERT FASTENER		
NAME OF SUBMITTER:	Julie E. Reitz		
SIGNATURE:	/Julie E. Reitz/		
DATE SIGNED:	01/14/2015		
Total Attachments: 10			
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ASSET PURCHASE AGREEMENT
BY AND AMONG
DESERT LUMBER – US LBM, LLC
DESERT FASTENERS AND SUPPLY LLC
AND THE OTHER PARTIES NAMED HEREIN

Dated as of May 2, 2014

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of May 2, 2014, by and among Desert Lumber — US LBM, LLC, a Delaware limited liability company ("Buyer"), Desert Fasteners and Supply LLC, a Nevada limited liability company ("Seller"), C. Lamont Clayton ("C. Clayton"), Tyson Clayton ("T. Clayton"), Dale Eggers ("D. Eggers"), Rachel Eggers ("R. Eggers"), Terry Ono ("T. Ono"), Cindy Ono ("C. Ono"), together with C. Clayton, T. Clayton, D. Eggers, R. Eggers, and T. Ono, the "Members").

WHEREAS, Seller is engaged in the business of marketing, distributing, supplying, manufacturing and selling building materials and products, including, without limitation, lumber, hardware and other materials (the "Business"); and

WHEREAS, subject to the terms and conditions set forth herein, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, substantially all of Seller's business, assets and properties other than the Excluded Assets, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in exchange for the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I PURCHASE AND SALE OF PURCHASED ASSETS

1.1 Purchase of Assets.

(a) On the terms and subject to the conditions set forth in this Agreement, Buyer shall purchase from Seller, and Seller shall sell, convey, assign, transfer and deliver (or cause to be sold, conveyed, assigned, transferred and delivered) to Buyer on the Closing Date, all of Seller's right, title and interest as of the Closing Date in all of Seller's properties, assets and rights of any kind, whether tangible or intangible (except for the Excluded Assets) (the "Purchased Assets"), free and clear of all Liens and restrictions of whatever nature, including, without limitation, the following:

(i) all of the agreements, contracts, licenses, instruments, leases, subleases and other arrangements, and all rights thereunder, described on the attached Schedule 1.1(a)(i) (collectively, the "Assumed Contracts");

(ii) all raw materials, work-in-process, finished goods and inventories (the "Inventory"), and all supplies, manufactured parts, spare parts, purchased parts, and other tangible property of any kind whatsoever, including, without limitation, all property of any kind located in any building, office, warehouse or other space leased, owned or occupied by Seller;

(iii) all machinery, equipment, tools, furniture, trade fixtures, automobiles, trailers and other vehicles, computers and all related equipment and

software, telephones and all related equipment and all other tangible personal property used by Seller or the Business;

(iv) all claims, deposits (including security and customer deposits), prepayments, advances, prepaid expenses, warranties, guarantees, refunds, causes of action, choses in action, rights of recovery and rights of set-off or recoupment of any kind (other than those relating exclusively to the Excluded Assets or Excluded Liabilities);

(v) all accounts, notes and other receivables of Seller (the "Accounts Receivable");

(vi) the right to receive and retain mail, email, and other communications, and all telephone numbers, facsimile numbers, domain names, websites and email addresses used by Seller or the Business;

(vii) all lists, books, records, documents, correspondence, and other information of any kind (including those pertaining to accounts, Transferred Employees, personnel, agents, customers, suppliers, distributors, referral sources and other business relations), and all studies, plans, books, ledgers, files and business records of every kind (including all financial, business and marketing plans and information), in each case whether evidenced in writing, electronic data (including by computer) or otherwise used by Seller or the Business;

(viii) all advertising, marketing, promotional and trade show materials and all other printed or written materials and the copyrights thereto used by Seller or the Business;

(ix) all transferable franchises, approvals, permits, licenses, orders, registrations, certifications, variances, authorizations and similar rights obtained from all permitting, licensing, accrediting and certifying agencies (including, but not limited to, all of the foregoing listed or described on the attached Schedule 3.18(d) and the attached Schedule 3.19(b)), and the rights to all data and records held by such agencies;

(x) all insurance and warranty proceeds received after the Closing Date arising from or relating to the Purchased Assets or the Assumed Liabilities, including, without limitation, with respect to damage, non-conformance of or loss to the Purchased Assets;

(xi) all claims of Seller against third parties relating to the Purchased Assets, whether known or unknown, choate or inchoate, or contingent or non-contingent;

(xii) all of Seller's Proprietary Rights used in the Business, including, without limitation, all contractual rights to Proprietary Rights owned by third parties that are used in the Business;

(xiii) all proprietary and third party commercial software used in the Business, including such software listed on the attached Schedule 1.1(a)(xiii), and all user, technical, maintenance or other documentation relating to any such software;

(c) The attached Schedule 3.11(c) sets forth each contract, commitment or obligation of Seller which is secured by a letter of credit, performance bond, guarantee or the like (other than guarantees of Seller) and the nature and amount of such security.

(d) Buyer has been supplied with a true and correct copy of all written contracts (and a true and correct written description of all oral contracts) which are referred to on the attached Schedule 3.11, together with all amendments, exhibits, attachments, waivers or other changes thereto.

3.12 Customers and Suppliers.

(a) Schedule 3.12 lists each of (a) the customers of the Business whose purchases of goods or services in the past twelve months have exceeded two percent (2%) of the total revenues of Business for that period and (b) the suppliers to the Business whose goods and/or services supplied in the past twelve months have exceeded five percent (5%) of the total cost of goods or services of the Business for that period.

(b) Except as set forth on Schedule 3.12, (i) no supplier listed in Schedule 3.12 (A) has stopped or decreased the rate of, (B) has threatened to stop or decrease the rate of, or (C) as a result of the transactions contemplated by this Agreement, is reasonably likely to stop or decrease the rate of, supplying materials, products or services to the Business, and (ii) no customer listed on Schedule 3.12 (A) has stopped or decreased the rate of, (B) has threatened to stop, or decrease the rate of, or (C) as a result of the transactions contemplated by this Agreement, is reasonably likely to stop or decrease the rate of, purchasing materials, products or services from Business.

3.13 Proprietary Rights.

(a) The attached Schedule 3.13 contains a complete and accurate list of all: (i) registered Proprietary Rights owned or used by Seller or the Business, (ii) pending applications for other registrations of Proprietary Rights filed by or on behalf of Seller, (iii) material unregistered Proprietary Rights owned or used by Seller or the Business and (iv) all material licenses and other rights granted by (x) any third party to Seller or (y) Seller to any third party with respect to any Proprietary Rights. Seller owns and possesses all right, title and interest to, or has the right to use pursuant to a valid and enforceable license, all Proprietary Rights necessary for the operation of the Business as presently conducted and as presently proposed to be conducted, free and clear of all Liens.

(b) Except as set forth on the attached Schedule 3.13, (i) there have been no claims made against Seller asserting the invalidity, misuse or unenforceability of any of the Proprietary Rights owned or used by Seller or the Business and, to Seller's Knowledge, there is no basis for any such claim, and (ii) Seller has not received any notices of, and has no Knowledge of any facts which indicate a likelihood of, any infringement or misappropriation by, or conflict with, any third party with respect to any Proprietary Rights (including any offer, demand or request that Seller license any rights from a third party). The transactions contemplated by this Agreement will not have a Material Adverse Effect on Seller's right, title or interest in and to the Proprietary Rights listed on the attached Schedule 3.13, and all of such

Proprietary Rights shall be owned or available for use by Buyer on identical terms and conditions immediately after the Closing, except as set forth on the attached Schedule 3.13.

(c) To Seller's Knowledge, the owners of the Proprietary Rights licensed to Seller have taken all reasonably necessary and desirable actions to properly maintain and protect such Proprietary Rights.

3.14 Litigation. Except as set forth on the attached Schedule 3.14, there are no actions, suits, proceedings (including any grievance or arbitration proceedings), orders, investigations or claims pending or, to Seller's Knowledge, threatened against or affecting Seller (or to Seller's Knowledge, pending or threatened against or affecting any of the officers, directors or employees of Seller with respect to their business or proposed business activities), or pending or threatened by Seller against any Person, at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality (including any actions, suits, proceedings or investigations with respect to the transactions contemplated by this Agreement); Seller is not subject to any grievance or arbitration proceedings under collective bargaining agreements or otherwise or any governmental investigations or inquiries; and, to Seller's Knowledge, there is no basis for any of the foregoing. Seller is fully insured with respect to each of the matters set forth on the attached Schedule 3.14 and will have no liability in respect of such matters.

3.15 Employees.

(a) Except as disclosed on the attached Schedule 3.15, (i) Seller is not party to or bound by any collective bargaining agreement or relationship with any labor organization; (ii) no executive or manager of Seller (A) to Seller's Knowledge, has any present intention to terminate such employee's employment or (B) is a party to any confidentiality, non-competition, proprietary rights or other such agreement between such employee and any other Person besides Seller that would be material to the performance of such employee's employment duties, or the ability of Seller to conduct the Business; (iii) no labor organization or group of employees has filed any representation petition or made any written or, to Seller's Knowledge, oral demand for recognition; (iv) no union organizing or decertification efforts are formally underway or, to Seller's Knowledge, threatened; (v) no labor strike, work stoppage, slowdown, or other material labor dispute has occurred, and none is underway or, to Seller's Knowledge, threatened; (vi) there is no workman's compensation liability, experience or matter that could have a Material Adverse Effect; (vii) there is no employment-related charge, complaint, grievance, investigation, inquiry or obligation of any kind, pending or, to Seller's Knowledge, threatened in any forum, relating to an alleged violation or breach by Seller (or its or their officers or directors) of any Law, regulation or Contract; and (viii) to the Seller's Knowledge, no employee or agent of Seller has committed any act or omission giving rise to liability for any violation or breach identified in subsection (vii) above.

(b) Except as set forth on the attached Schedule 3.15, (i) there are no written employment contracts or severance agreements with any employees of Seller, and (ii) there are no written personnel policies, rules or procedures applicable to employees of Seller.

(c) With respect to this transaction, any notice required under any law or collective bargaining agreement has been given, and all bargaining obligations with any

reasonable attorneys' fees and expenses and all amounts paid in investigation, defense or settlement of any of the foregoing and enforcement of its rights hereunder, whether or not litigation has commenced).

"Material Adverse Effect" has the meaning set forth in Section 3.7.

"Members" has the meaning set forth in the preamble.

"Net Working Capital" means the sum of (i) the net current assets included in the Purchased Assets and set forth on Exhibit D (which, for the avoidance of doubt, excludes cash, intercompany accounts, and Affiliate receivables) less the sum of (ii) the current liabilities set forth on Exhibit D, in each case determined in the accordance with GAAP.

"Net Working Capital Adjustment Amount" means (a) if the Net Working Capital at Closing exceeds the Target Net Working Capital, an amount equal to (i) the Net Working Capital at the Closing minus (ii) the Target Net Working Capital, or (b) if the Net Working Capital at Closing is less than the Target Net Working Capital, an amount equal to (i) the Net Working Capital at the Closing minus (ii) the Target Net Working Capital.

"Neutral Accountant" has the meaning set forth in Section 1.5(b).

"Noncontrolling Party" has the meaning set forth in Section 5.5(c).

"Objection Notice" has the meaning set forth in Section 5.4(b)(ii).

"Permits" means all permits, licenses, franchises, approvals, consents, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, trust, corporation, limited liability company, entity or governmental entity (whether foreign, federal, state, county, city or otherwise and including any instrumentality, division, agency or department thereof).

"Proprietary Rights" means all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications and patent disclosures and any reissuance, continuation, continuation-in-part, division, extension or reexamination thereof; trademarks, service marks, trade dress, logos, trade names, Internet domain names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith; copyrights and copyrightable works; mask works; and all registrations, applications and renewals for any of the foregoing and rights to sue for past infringement; trade secrets and confidential and proprietary information, including ideas, formulas, compositions, know-how, related processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, manufacturing and production processes and techniques, customer and supplier lists, pricing and cost information and technical data and manuals (in each case relating to products currently in production as well as former products and products under development); computer software and modifications thereto (including websites, data, source code and related

documentation); all other proprietary rights; and all copies and tangible embodiments thereof (in whatever form or medium), together with all books, records, drawings or other indicia, however evidenced.

“Purchase Price” has the meaning set forth in Section 1.3(a).

“Purchased Assets” has the meaning set forth in Section 1.1(a).

“Related Agreements” means the Asset Purchase Agreement, dated as of the date hereof by and among Buyer, Desert Truss LLC, Desert Lumber LLC and the other parties thereto, and the Asset Purchase Agreement, dated as of the date hereof by and among Buyer, Integrity Truss LLC and the other parties thereto.

“Real Estate Leases” means any real estate leases of Seller.

“Real Property” means the real property owned, leased or subleased by Seller or used in the Business, together with all buildings, structures and facilities located thereon.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Restricted Period” has the meaning set forth in Section 6.8(a).

“Restricted Persons” has the meaning set forth in Section 6.8(f).

“Restricted Territory” means North America (except in the case of C. Clayton and T. Clayton such term shall only mean Arizona, Utah, Texas, California and Nevada).

“Restrictive Covenants” has the meaning set forth in Section 6.8(e).

“Review Period” has the meaning set forth in Section 1.5.

“Sales and Transfer Taxes” has the meaning set forth in Section 6.6(a).

“Seller” has the meaning set forth in the preamble.

“Seller Indemnified Parties” has the meaning set forth in Section 5.3.

“Seller Parties” has the meaning set forth in Section 6.8(a).

“Seller Party” has the meaning set forth in Section 6.8(a).

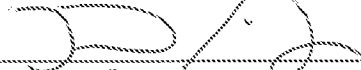
“Seller’s Expenses” has the meaning set forth in Section 1.2(b)(ii).

“Subsidiary” means, with respect to any Person, of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (irrespective of whether, at the time, stock of

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be duly executed as of the date and year first written above.

BUYER:

Desert Lumber – US LBM, LLC

By: 

Name: L.T. Gibson

Title: Chief Executive Officer

SELLER:

Desert Fasteners and Supply LLC

By: _____

Name: Tyson Clayton

Title: Manager

MEMBERS:

C. Lamont Clayton, individually

Tyson Clayton, individually

Dale Eggers, individually

Rachel Eggers, individually

Terry Ono, individually

Cindy Ono, individually

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be duly executed as of the date and year first written above.

BUYER:

Desert Lumber -- US LBM, LLC

By: _____

Name:

Title:

SELLER:

Desert Fasteners and Supply LLC

By: _____

Name: Tyson Clayton

Title: Manager

MEMBERS:

C. Lamont Clayton, individually

Tyson Clayton, individually

Dale Eggers, individually

Rachel Eggers, individually

Terry Ono, individually

Cindy Ono, individually

Asset Purchase Agreement Disclosure Schedule
Desert Lumber – US LBM, LLC and Desert Fasteners and Supply, LLC

Proprietary Rights Schedule 3.13

3.13(a) – Below is a listing of all: (i) registered Proprietary Rights owned or used by Seller or the Business, (ii) pending applications for other registrations of Proprietary Rights filed by or on behalf of Seller, (iii) material unregistered Proprietary Rights owned or used by Seller or the Business and (iv) all material licenses and other rights granted by (x) any third party to Seller or (y) Seller to any third party with respect to any Proprietary Rights.

(i) Proprietary Rights

Name: “Desert Fasteners and Supply, LLC” (registered with the Nevada Secretary of State on March 10, 2009)

Domain Name: thefastenerpros.com

Domain Name: dfslv.com

Fictitious Firm Name: “The Fastener Pros” (Fictitious Firm Name Certificate filed with the Clark County, Nevada County Clerk on December 3, 2013)

Trade Name: “Fastener Pros” with the following design (Trade Name filed with the Nevada Secretary of State on December 12, 2013):



Service Mark: “Fastener Pros” with the following design (Service Mark filed with the Nevada Secretary of State on December 12, 2013):



Trademark: “Fastener Pros” with the following design (Trademark filed with the Nevada Secretary of State on December 12, 2013):



(ii) Pending Applications

Trademark: “Fastener Pros” with the following design (Pending Trademark application filed with the United States Patent and Trademark Office on January 28, 2014 (Serial No. 86178024)):

